

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

COTTONWOOD
ENVIRONMENTAL LAW
CENTER,

Plaintiff,

v.

YELLOWSTONE MOUNTAIN
CLUB LLC,

Defendant.

No. 2:23-CV-00026-BMM

ORDER

Plaintiff Cottonwood Environmental Law Center (“Cottonwood”) filed a motion for clarification regarding their second Rule 34 site investigation. (Doc. 74.) Cottonwood seeks clarification on whether it may use a drone during the investigation and whether it can monitor the end of the discharge pipe for the Hole 4 water hazard. (*Id.* at 2–3.)

The Court will not allow Cottonwood to use a drone. Cottonwood argues that using a drone “is necessary given the deep snow, limited time, and large area that needs to be inspected.” (Doc. 75 at 2.) Cottonwood contends further that because the 2025 access agreement is silent regarding drone usage, it should be allowed to use a

drone. (*Id.*) The Court notes that previous access agreements between the parties have prohibited the use of drones. (Doc. 75-2 at 5.) The Court will follow the policy regarding drone use that has previously controlled the conduct between the parties. Cottonwood will not be allowed to use a drone. The Court also notes that the parties were given various dates for the site visit. If Cottonwood had been worried about snow, Cottonwood should have negotiated a later date when snow would not have been an issue. Cottonwood remains free to document its Rule 34 inspection per the parameters of the access agreement. (*See* Doc. 72.)

The Court will not allow Cottonwood to monitor the discharge pipe of the Hole 4 water hazard. The access agreement clearly states what areas may be monitored during the Rule 34 inspection. (*See* Doc. 72.) The access agreement allows Cottonwood to collect samples from Unnamed Tributary #4 at various points. (*Id.* at 2 – 3.) As the Court understands, the discharge pipe of the Hole 4 water hazard flows into Unnamed Tributary #4 and subsequently into the South Fork of the West Fork Gallatin River. The current access agreement gives Cottonwood access to sampling water that flows from the discharge pipe of the Hole 4 water hazard. (*Id.*) The Court will prohibit Cottonwood from monitoring the discharge pipe of the Hole 4 water hazard because it is outside the scope of the agreed upon access agreement. The Court also notes that the photograph provided by Cottonwood alleging that the Hole 4 water hazard discharge pipe flows when it is not raining or experiencing

snowmelt lacks context. (*See* Doc. 75 at 4–5.) Cottonwood does not provide the date or time the photograph was taken. (*Id.*) Cottonwood also does not provide the Court with information such as the weather before or when the photograph was taken. (*Id.*) The Court cannot assess the credibility of Cottonwood’s allegation without such information.

ORDER

Accordingly, **it is ORDERED** that Plaintiff’s Motion for Clarification (Doc. 74) is **DENIED**.

1. Plaintiff may not use a drone during its Rule 34 inspection.
2. Plaintiff may not monitor the discharge pipe from the Hole 4 water hazard.

DATED this 4th day of April 2025.



Brian Morris, Chief District Judge
United States District Court